



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0288      **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**  
**NO. HB 1018 - 01/26/2007**

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Department of Agriculture

1    FOR AN ACT ENTITLED, An Act to make an appropriation for the control and suppression  
2        of pine beetles in Custer State Park.

3    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4        Section 1. There is hereby appropriated from the general fund the sum of one hundred  
5    seventy-five thousand dollars (\$175,000), or so much thereof as may be necessary, to the  
6    Department of Agriculture, Division of Resource Conversation and Forestry, for the control and  
7    suppression of pine beetles in Custer State Park.

8        Section 2. The secretary of agriculture shall approve vouchers and the state auditor shall  
9    draw warrants to pay expenditures authorized by this Act.

10       Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
11    June 30, 2008, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0379

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1058** - 02/14/2007

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the placement of  
2 juveniles under the jurisdiction of the Department of Corrections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 26-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of §§ 26-1-1, 26-6-6.1, and 26-7A-101, a child welfare  
7 agency and the Department of Corrections may provide foster care for a person over the age of  
8 majority but less than twenty-one years of age if the person is under the continuing juvenile  
9 jurisdiction of the Department of Corrections.

10 Section 2. That § 26-7A-26 be amended to read as follows:

11 26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely  
12 detained at any time in a jail, lockup, or in any type of detention or temporary care facility  
13 containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may  
14 not be securely detained in a jail, lockup, or in any type of detention or temporary care facility  
15 containing adult prisoners except for approved collocated detention centers as defined in § 26-



1 7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.

2 An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six  
3 hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or  
4 release to parents if the child is sight and sound separated from adult prisoners.

5 In any area not designated as a metropolitan statistical area by the United States Bureau of  
6 the Census, an apparent or alleged delinquent child may be held in an adult lockup or jail for  
7 up to forty-eight hours excluding holidays and weekends or until the temporary custody hearing,  
8 whichever is earlier, if the facility has been certified by the Department of Corrections as  
9 providing sight and sound separation of juveniles from adults and if no suitable juvenile facility  
10 is available.

11 A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being  
12 tried in circuit court as an adult pursuant to § 26-11-3.1 may be held in an adult lockup or jail  
13 if physically separated from adult prisoners.

14 A child who has attained the age of majority who is under the continuing jurisdiction of the  
15 court or the Department of Corrections may be held in an adult jail or lockup.

16 A child under the age of eighteen years who has been transferred to adult court pursuant to  
17 §§ 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held in an  
18 adult jail or lockup.

19 Section 3. That § 26-8B-6 be amended to read as follows:

20 26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall  
21 enter a decree of disposition according to the least restrictive alternative available in keeping  
22 with the best interests of the child. The decree shall contain one or more of the following  
23 alternatives:

24 (1) The court may place the child on probation or under protective supervision in the

1 custody of one or both parents, guardian, custodian, relative, or another suitable  
2 person under conditions imposed by the court;

3 (2) The court may require as a condition of probation that the child report for assignment  
4 to a supervised work program, provided the child is not placed in a detention facility  
5 and is not deprived of the schooling that is appropriate to the child's age, needs, and  
6 specific rehabilitative goals. The supervised work program shall be of a constructive  
7 nature designed to promote rehabilitation, shall be appropriate to the age level and  
8 physical ability of the child, and shall be combined with counseling by a court  
9 services officer or other guidance personnel. The supervised work program  
10 assignment shall be made for a period of time consistent with the child's best  
11 interests, but may not exceed ninety days;

12 (3) If the court finds that the child has violated a valid court order, the court may place  
13 the child in a detention facility for not more than ninety days, which may be in  
14 addition to any period of temporary custody, for purposes of disposition if:

15 (a) The child is not deprived of the schooling that is appropriate for the child's  
16 age, needs, and specific rehabilitative goals;

17 (b) The child had a due process hearing before the order was issued; and

18 (c) A plan of disposition from a court services officer is provided to the court;

19 (4) The court may require the child to pay for any damage done to property or for  
20 medical expenses under conditions set by the court if payment can be enforced  
21 without serious hardship or injustice to the child;

22 (5) The court may commit the child to the Department of Corrections for placement in  
23 a juvenile correctional facility, foster home, group home, group care center, ~~or~~  
24 residential treatment center, or other community-based services, if those community-

1 based services were not provided prior to commitment, pursuant to chapter 26-11A.  
2 Prior to placement in a juvenile correctional facility, an interagency team comprised  
3 of representatives from the Department of Human Services, Department of Social  
4 Services, Department of Education, the Department of Corrections, and the Unified  
5 Judicial System shall make a written finding that placement at a Department of  
6 Corrections facility is the least restrictive placement commensurate with the best  
7 interests of the child. Subsequent placement in any other Department of Corrections  
8 facility may be authorized without an interagency review;

9 (6) The court may place a child in an alternative educational program;

10 (7) The court may order the child to be examined and treated at the Human Services  
11 Center;

12 (8) The court may impose a fine not to exceed five hundred dollars;

13 (9) The court may order the suspension or revocation of the child's driving privilege or  
14 restrict the privilege in such manner as the court sees fit or as required by § 32-12-  
15 52.4, including requiring that financial responsibility be proved and maintained;

16 (10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41,  
17 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian,  
18 or other party responsible for the child.

19 No adjudicated child in need of supervision may be incarcerated in a detention facility  
20 except as provided in subdivision (3) or (5) of this section.

21 Section 4. That § 26-11A-8 be amended to read as follows:

22 26-11A-8. If a juvenile is committed to the Department of Corrections, the department shall  
23 determine the extent of security and treatment services that are in the best interest of the juvenile  
24 and in the best interest of the state. When the department makes its determination, it shall place

1 the juvenile in a juvenile correctional facility under the department's control pursuant to § 1-15-  
2 1.4 or a group home, group care center, ~~or~~ residential treatment center, or other community-  
3 based services, if those community-based services were not provided prior to commitment.

4 Section 5. That § 26-11A-9 be amended to read as follows:

5 26-11A-9. After the juvenile's initial placement pursuant to § 26-11A-8, the secretary of  
6 corrections may transfer a juvenile to a different Department of Corrections facility or program,  
7 the Human Services Center, detention, shelter, or a group home, group care center, ~~or~~ residential  
8 treatment center, or other community-based services.

9 Section 6. That § 26-11A-20 be amended to read as follows:

10 26-11A-20. The secretary of corrections may ~~at any time order the discharge of a child from~~  
11 ~~the Department of Corrections as a reward for good conduct upon satisfactory evidence of~~  
12 ~~reformation. The discharge of a juvenile from the Department of Corrections as a reward for~~  
13 ~~good conduct upon satisfactory evidence of reformation or for having arrived at the age of~~  
14 ~~twenty-one years shall be a complete release from all penalties incurred by adjudication for the~~  
15 ~~offense for which he was committed.~~ discharge a juvenile from the Department of Corrections  
16 upon the following:

17 (1) As a reward for good conduct and upon satisfactory evidence of reformation;

18 (2) As a result of a conviction for a new crime as an adult, if the juvenile is placed on  
19 adult probation or sentenced to the county jail or state penitentiary;

20 (3) If the juvenile, upon reaching the age of majority, lives outside the jurisdiction of the  
21 State of South Dakota and the interstate compact on juveniles is not available due to  
22 the juvenile's age or circumstances; or

23 (4) If the juvenile is on aftercare and has a suitable placement, and a discharge is  
24 determined to be in the best interests of the juvenile.

1        No adjudicated juvenile may remain within the jurisdiction of the Department of Corrections  
2 beyond the age of twenty-one years. The discharge of a juvenile from the Department of  
3 Corrections constitutes a complete release from all penalties, excluding unpaid fines, fees, or  
4 restitution.

5        Section 7. That chapter 26-11A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7        A risk and needs evaluation shall be conducted for any juvenile under the jurisdiction of the  
8 department who reaches the age of nineteen years who has not been discharged pursuant to § 26-  
9 11A-20. The evaluation shall focus on the amount of progress made while under the jurisdiction  
10 of the department, the ongoing needs of the juvenile, and what risks the juvenile would present  
11 to the community or self if discharged at that point. Additionally, the evaluation shall identify  
12 recommendations regarding treatment and transition services that will prepare the juvenile for  
13 discharge from the jurisdiction of the department. The secretary shall initiate any actions  
14 necessary, including referral or civil commitment to service systems for the mentally ill or  
15 developmentally disabled, to ensure the treatment needs of the juvenile and the safety interests  
16 of the public are best served.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0348

## HOUSE ENGROSSED NO. **HB 1065** - 02/06/2007

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct multi-use  
2 storage facilities at South Dakota State University and to make an appropriation therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Board of Regents may contract for the planning, site preparations,  
5 construction, utilities, equipping, and maintaining of multi-use storage facilities at South Dakota  
6 State University at an estimated cost of four hundred fifty thousand dollars.

7 Section 2. There is hereby appropriated from plant sciences service funds the sum of four  
8 hundred fifty thousand dollars (\$450,000), or so much thereof as may be necessary, to the Board  
9 of Regents to accomplish the purposes of this Act.

10 Section 3. The Board of Regents may accept, transfer, and expend any additional other funds  
11 obtained for these purposes from federal sources, gifts, contributions, or any other sources,  
12 including funds identified in section 2 of this Act.

13 Section 4. The design and construction shall be under the general supervision of the Bureau  
14 of Administration as provided by chapter 5-14.

15 Section 5. The commissioner of the Bureau of Administration and the executive director of  
16 the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay



1 expenditures authorized by this Act.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0330

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1068** - 02/12/2007

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney  
General

- 1 FOR AN ACT ENTITLED, An Act to revise the criminal penalty for perjury.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. That § 22-29-5 be amended to read as follows:
- 4 22-29-5. Perjury:
- 5 (1) If committed in any trial for felony, is a Class 3 felony;
- 6 (2) If committed in any other trial, court proceeding, deposition, or administrative
- 7 proceeding conducted under oath, is a Class 5 felony;
- 8 (3) If committed in any other manner proscribed by law, is a Class 1 misdemeanor.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0331

## HOUSE ENGROSSED NO. **HB 1069** - 02/06/2007

Introduced by: The Committee on Appropriations at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to increase liquidated court costs and revise how they are  
2 allocated.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23-3-52 be amended to read as follows:

5 23-3-52. In addition to any other penalty, assessment, or fine provided by law, there shall  
6 be levied liquidated costs in the amount of ~~thirty~~ forty dollars for partial reimbursement to state  
7 government and its subdivisions for law enforcement and judicial expenses incurred in  
8 providing the personnel, training, and facilities relative to the criminal justice system and to the  
9 911 emergency reporting system, on each conviction for the following:

10 (1) Violation of state statutes or regulations having criminal penalties; or

11 (2) Violation of county or municipal ordinances.

12 If a fine is suspended in whole or in part, the liquidated costs for law enforcement and  
13 training may not be reduced, except that the judge may waive all or any part of the payment of  
14 liquidated costs which would work a hardship on the person convicted or on the person's  
15 immediate family.



1 Section 2. That § 23-3-53 be amended to read as follows:

2 23-3-53. After a determination by the court of the amount due, the clerk of courts shall  
3 collect the amount due and transmit such amount monthly to the state treasurer. The state  
4 treasurer shall place ~~twenty~~ thirty dollars of the ~~thirty~~ forty dollar fee into the law enforcement  
5 officers training fund, six dollars of the ~~thirty~~ forty dollar fee into the court appointed attorney  
6 and public defender payment fund, two dollars of the ~~thirty~~ forty dollar fee into the court  
7 appointed special advocates fund, one dollar of the ~~thirty~~ forty dollar fee into the 911  
8 telecommunicator training fund, and one dollar of the ~~thirty~~ forty dollar fee into the abused and  
9 neglected child defense fund.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0373

HOUSE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HB 1077** -  
01/22/2007

Introduced by: The Committee on Appropriations at the request of the Bureau of Finance and Management

1 FOR AN ACT ENTITLED, An Act to impose a tax on the net revenues of intermediate care  
2 facilities for the mentally retarded.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the Department of Revenue and Regulation;

6 (2) "Intermediate care facility for the mentally retarded," a treatment or care center as  
7 defined by 1905(d) of the Social Security Act and Code of Federal Regulations 42  
8 CFR 435.1009 as of January 1, 2007;

9 (3) "Net revenues," the revenue paid to an intermediate care facility for the mentally  
10 retarded for resident care, room, board, and services less contractual adjustments and  
11 does not include revenue from sources other than operations, including interest and  
12 guest meals.

13 Section 2. There is hereby imposed a tax of five and one-half percent on the net revenues  
14 of each intermediate care facility for the mentally retarded.



1 Section 3. The department shall collect and administer the tax imposed by this Act.

2 Section 4. The returns and remittances may be required at a time determined by the secretary  
3 of revenue and regulation. The provisions of chapter 10-59 are applicable to the tax imposed by  
4 this chapter.

5 Section 5. The secretary of revenue and regulation may promulgate rules pursuant to chapter  
6 1-26 concerning:

- 7 (1) Licensing, including bonding and filing license applications;
- 8 (2) The filing of returns and payment of the tax;
- 9 (3) Taxpayer record-keeping requirements; and
- 10 (4) Determining auditing methods.

11 Section 6. Any person who:

- 12 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed  
13 by this Act is guilty of a Class 6 felony;
- 14 (2) Fails to pay tax due under this Act within sixty days from the date the tax becomes  
15 due is guilty of a Class 1 misdemeanor;
- 16 (3) Fails to keep the records and books required by this Act or refuses to exhibit these  
17 records to the secretary of revenue and regulation or the secretary's agents for the  
18 purpose of examination is guilty of a Class 1 misdemeanor;
- 19 (4) Fails to file a return required by this Act within sixty days from the date the return  
20 is due is guilty of a Class 1 misdemeanor;
- 21 (5) Willfully violates any rule of the secretary of revenue and regulation for the  
22 administration and enforcement of the provisions of this Act is guilty of a Class 1  
23 misdemeanor; or
- 24 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-

1 month period is guilty of a Class 6 felony.

2 Section 7. Each person subject to tax under this Act shall keep records and books of all  
3 receipts, together with invoices, and other pertinent papers and documents. The books and  
4 records and other papers and documents are, at all times during business hours of the day,  
5 subject to inspection by the secretary of revenue and regulation or the secretary's agents and  
6 employees to determine the amount of tax due. The books and records shall be preserved for a  
7 period of three years unless the secretary of revenue and regulation, in writing, authorized their  
8 destruction or disposal at an earlier date.

9 Section 8. Taxes collected under this Act shall be remitted to the state treasurer for credit  
10 to the state general fund to be used to help offset the cost of health care services provided to the  
11 citizens by the State of South Dakota.

12 Section 9. The tax implemented under section 2 of this Act is not due and payable until the  
13 Department of Social Services receives an approved medicaid state plan amendment from the  
14 Centers for Medicare and Medicaid Services.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

448N0426

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1129** - 01/29/2007

Introduced by: Representatives Feinstein, Dennert, Engels, Gillespie, Juhnke, Lust, Nygaard,  
and Van Norman and Senators Knudson, Katus, and Koetzle

1 FOR AN ACT ENTITLED, An Act to provide for the conversion of certain cooperatives into  
2 business corporations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 47-1A be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any cooperative may convert itself into a business corporation by adopting an amendment  
7 to its articles by which it elects to become subject to chapter 47-1A, together with changes in  
8 its articles required by the chapter and other desirable changes permitted by the chapter. Such  
9 amendment shall be adopted, filed, and recorded in the manner provided by the law then  
10 applicable to the cooperative. The conversion is effective upon the issuance of the certificate  
11 of amendment by the secretary of state.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

554N0527

## HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1183** - 02/01/2007

Introduced by: Representatives Peters, Ahlers, Dennert, Elliott, Engels, Hackl, Hargens, Hunt, Juhnke, Moore, Novstrup (Al), Pederson (Gordon), Rhoden, Sigdestad, Street, Turbiville, and Weems and Senators Napoli, Bartling, Dempster, Duenwald, Garnos, Hansen (Tom), Hanson (Gary), Hauge, Hundstad, Kloucek, Koetzle, and Turbak

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of a  
2 transporter license plate.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-9-57 be amended to read as follows:

5 32-9-57. Any commercial motor carrier located in the state hauling a new trailer with a  
6 manufacturer's statement of origin or certificate of title and who has registered with the  
7 Department of Revenue and Regulation as a transporter may use a transporter plate upon the  
8 streets and highways for in-transit purposes. The fee for a transporter plate is fifty dollars and  
9 the fee shall be deposited in the license plate special revenue fund. Any new trailer with bearing  
10 a transporter plate may be used ~~to haul other new trailers~~ for a period of ten days. A bill of  
11 lading that contains the origin and destination of the new trailer shall accompany each  
12 movement. No transporter may use a transporter plate for any other purpose. A violation of this  
13 section is a ~~Class 1~~ Class 2 misdemeanor.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

724N0591

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1286** - 02/14/2007

Introduced by: Representatives Vehle, Hills, Krebs, Lust, Moore, Thompson, Turbiville, and Van Etten and Senators Olson (Ed), Dempster, Duenwald, Garnos, Hansen (Tom), Hanson (Gary), Napoli, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to require that records of archaeological sites be maintained  
2 and to provide that certain records remain confidential.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-20-21 be amended to read as follows:

5 1-20-21. The state archaeologist, on behalf of the State Historical Society Board of Trustees  
6 shall conduct, as part of that board's statewide survey of historic properties, a survey of ~~sites of~~  
7 archaeological sites ~~and anthropological objects and specimens~~ located within the state. ~~The~~  
8 ~~state archaeologist shall make available the results of such survey to all agencies of the state~~  
9 ~~government and its political subdivisions that, in the opinion of the state archaeologist, may~~  
10 ~~conduct activities which may affect such archaeological or anthropological sites~~ and maintain  
11 records of such sites.

12 Section 2. That chapter 1-20 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Any records maintained pursuant to § 1-20-21 pertaining to the location of an archaeological



1 site shall remain confidential to protect the integrity of the archaeological site. The state  
2 archaeologist may make the information from the records of an archeological site available to  
3 any agency of state government and any political subdivision of the state or to any tribe, which,  
4 in the opinion of the state archaeologist, may conduct an activity that affects any such site. The  
5 state archaeologist shall also make the information from the records of an archeological site  
6 available to the owner of the land that is an archeological site and may make the information  
7 available to any qualified researcher or research entity.

8 Section 3. That chapter 34-27 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Any record maintained pursuant to § 1-20-21 pertaining to the location of unmarked burials  
11 and other human remains shall remain confidential to protect the integrity of unmarked burials,  
12 human skeletal remains, and associated funerary objects. The state archaeologist may make the  
13 information from the records of such a site available to any agency of state government and any  
14 political subdivision of the state or to any tribe, which, in the opinion of the state archaeologist,  
15 may conduct activities that affect any such burial or human remains. The state archaeologist  
16 shall also make the information from the records of such a site available to the owner of the land  
17 that is such a site and may make the information available to any qualified researcher or research  
18 entity.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

607N0419

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 130** - 02/14/2007

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Dempster, Hansen (Tom), Heidepriem, Jerstad, Katus, and Olson (Ed) and Representatives Dykstra, Cutler, Jerke, Nygaard, and Rave

1 FOR AN ACT ENTITLED, An Act to permit the Department of Health to provide an electronic  
2 report of marriages upon request.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any electronic list of persons married in South Dakota may be released by the Department  
7 of Health or the local registrar of deeds.



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

823N0714

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 197** - 02/14/2007

Introduced by: Senators Dempster, Abdallah, Hanson (Gary), Knudson, and Maher and  
Representatives Lust, Cutler, Gillespie, and Rave

1 FOR AN ACT ENTITLED, An Act to adopt the Revised Uniform Anatomical Gift Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. This Act may be cited as the Revised Uniform Anatomical Gift Act.

4 Section 2. In this Act:

5 (1) "Adult" means an individual who is at least eighteen years of age.

6 (2) "Agent" means an individual:

7 (A) Authorized to make health care decisions on the principal's behalf by a power  
8 of attorney for health care; or

9 (B) Expressly authorized to make an anatomical gift on the principal's behalf by  
10 any other record signed by the principal.

11 (3) "Anatomical gift" means a donation of all or part of a human body to take effect after  
12 the donor's death for the purpose of transplantation, therapy, research, or education.

13 (4) "Decedent" means a deceased individual whose body or part is or may be the source  
14 of an anatomical gift. The term does not include a blastocyst, embryo, or fetus that  
15 is the subject of an induced abortion.



- 1 (5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling,  
2 grandchild, grandparent, or guardian of the individual who makes, amends, revokes,  
3 or refuses to make an anatomical gift, or another adult who exhibited special care and  
4 concern for the individual. The term does not include a person to which an  
5 anatomical gift could pass under section 11 of this Act.
- 6 (6) "Document of gift" means a donor card or other record used to make an anatomical  
7 gift. The term includes a statement or symbol on a driver's license, identification  
8 card, or donor registry.
- 9 (7) "Donor" means an individual whose body or part is the subject of an anatomical gift.
- 10 (8) "Donor registry" means a database that contains records of anatomical gifts and  
11 amendments to or revocations of anatomical gifts.
- 12 (9) "Driver's license" means a license or permit issued by the Department of Public  
13 Safety to operate a vehicle, whether or not conditions are attached to the license or  
14 permit.
- 15 (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or  
16 state law to engage in the recovery, screening, testing, processing, storage, or  
17 distribution of human eyes or portions of human eyes.
- 18 (11) "Guardian" means a person appointed by a court to make decisions regarding the  
19 support, care, education, health, or welfare of an individual. The term does not  
20 include a guardian ad litem.
- 21 (12) "Hospital" means a facility licensed as a hospital under the law of any state or a  
22 facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 23 (13) "Identification card" means an identification card issued by the Department of Public  
24 Safety.

- 1 (14) "Know" means to have actual knowledge.
- 2 (15) "Minor" means an individual who is under eighteen years of age.
- 3 (16) "Organ procurement organization" means a person designated by the Secretary of the  
4 United States Department of Health and Human Services as an organ procurement  
5 organization.
- 6 (17) "Parent" means a parent whose parental rights have not been terminated.
- 7 (18) "Part" means an organ, an eye, or tissue of a human being. The term does not include  
8 the whole body.
- 9 (19) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
10 limited liability company, association, joint venture, public corporation, government  
11 or governmental subdivision, agency, or instrumentality, or any other legal or  
12 commercial entity.
- 13 (20) "Physician" means an individual authorized to practice medicine or osteopathy under  
14 the law of any state.
- 15 (21) "Procurement organization" means an eye bank, organ procurement organization, or  
16 tissue bank.
- 17 (22) "Prospective donor" means an individual who is dead or near death and has been  
18 determined by a procurement organization to have a part that could be medically  
19 suitable for transplantation, therapy, research, or education. The term does not  
20 include an individual who has made a refusal.
- 21 (23) "Reasonably available" means able to be contacted by a procurement organization  
22 without undue effort and willing and able to act in a timely manner consistent with  
23 existing medical criteria necessary for the making of an anatomical gift.
- 24 (24) "Recipient" means an individual into whose body a decedent's part has been or is

- 1 intended to be transplanted.
- 2 (25) "Record" means information that is inscribed on a tangible medium or that is stored  
3 in an electronic or other medium and is retrievable in perceivable form.
- 4 (26) "Refusal" means a record created under section 7 of this Act that expressly states an  
5 intent to bar other persons from making an anatomical gift of an individual's body or  
6 part.
- 7 (27) "Sign" means, with the present intent to authenticate or adopt a record:  
8 (A) To execute or adopt a tangible symbol; or  
9 (B) To attach to or logically associate with the record an electronic symbol, sound,  
10 or process.
- 11 (28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
12 United States Virgin Islands, or any territory or insular possession subject to the  
13 jurisdiction of the United States.
- 14 (29) "Technician" means an individual determined to be qualified to remove or process  
15 parts by an appropriate organization that is licensed, accredited, or regulated under  
16 federal or state law. The term includes an enucleator.
- 17 (30) "Tissue" means a portion of the human body other than an organ or an eye. The term  
18 does not include blood unless the blood is donated for the purpose of research or  
19 education.
- 20 (31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal  
21 or state law to engage in the recovery, screening, testing, processing, storage, or  
22 distribution of tissue.
- 23 (32) "Transplant hospital" means a hospital that furnishes organ transplants and other  
24 medical and surgical specialty services required for the care of transplant patients.

1 Section 3. This Act applies to an anatomical gift or amendment to, revocation of, or refusal  
2 to make an anatomical gift, whenever made.

3 Section 4. Subject to section 8 of this Act, an anatomical gift of a donor's body or part may  
4 be made during the life of the donor for the purpose of transplantation, therapy, research, or  
5 education in the manner provided in section 5 of this Act by:

6 (1) The donor, if the donor is an adult or if the donor is a minor and is:

7 (A) Emancipated; or

8 (B) Authorized under state law to apply for a driver's license because the donor is  
9 at least fourteen years of age;

10 (2) An agent of the donor, unless the power of attorney for health care or other record  
11 prohibits the agent from making an anatomical gift;

12 (3) A parent of the donor, if the donor is an unemancipated minor; or

13 (4) The donor's guardian.

14 Section 5. (a) A donor may make an anatomical gift:

15 (1) By authorizing a statement or symbol indicating that the donor has made an  
16 anatomical gift to be imprinted on the donor's driver's license or identification card;

17 (2) In a will;

18 (3) During a terminal illness or injury of the donor, by any form of communication  
19 addressed to at least two adults, at least one of whom is a disinterested witness; or

20 (4) As provided in subsection (b).

21 (b) A donor or other person authorized to make an anatomical gift under section 4 of this  
22 Act may make a gift by a donor card or other record signed by the donor or other person making  
23 the gift or by authorizing that a statement or symbol indicating that the donor has made an  
24 anatomical gift be included on a donor registry. If the donor or other person is physically unable

1 to sign a record, the record may be signed by another individual at the direction of the donor or  
2 other person and must:

3 (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness,  
4 who have signed at the request of the donor or the other person; and

5 (2) State that it has been signed and witnessed as provided in paragraph (1).

6 (c) Revocation, suspension, expiration, or cancellation of a driver's license or identification  
7 card upon which an anatomical gift is indicated does not invalidate the gift.

8 (d) An anatomical gift made by will takes effect upon the donor's death whether or not the  
9 will is probated. Invalidation of the will after the donor' death does not invalidate the gift.

10 Section 6. (a) Subject to section 8 of this Act, a donor or other person authorized to make  
11 an anatomical gift under section 4 of this Act may amend or revoke an anatomical gift by:

12 (1) A record signed by:

13 (A) The donor;

14 (B) The other person; or

15 (C) Subject to subsection (b), another individual acting at the direction of the  
16 donor or the other person if the donor or other person is physically unable to  
17 sign; or

18 (2) A later-executed document of gift that amends or revokes a previous anatomical gift  
19 or portion of an anatomical gift, either expressly or by inconsistency.

20 (b) A record signed pursuant to subsection (a)(1)(C) must:

21 (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness,  
22 who have signed at the request of the donor or the other person; and

23 (2) State that it has been signed and witnessed as provided in paragraph (1).

1 (c) Subject to section 8 of this Act, a donor or other person authorized to make an  
2 anatomical gift under section 4 of this Act may revoke an anatomical gift by the destruction or  
3 cancellation of the document of gift, or the portion of the document of gift used to make the gift,  
4 with the intent to revoke the gift.

5 (d) A donor may amend or revoke an anatomical gift that was not made in a will by any form  
6 of communication during a terminal illness or injury addressed to at least two adults, at least one  
7 of whom is a disinterested witness.

8 (e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the  
9 manner provided for amendment or revocation of wills or as provided in subsection (a).

10 Section 7. (a) An individual may refuse to make an anatomical gift of the individual's body  
11 or part by:

12 (1) A record signed by:

13 (A) The individual; or

14 (B) Subject to subsection (b), another individual acting at the direction of the  
15 individual if the individual is physically unable to sign;

16 (2) The individual's will, whether or not the will is admitted to probate or invalidated  
17 after the individual's death; or

18 (3) Any form of communication made by the individual during the individual's terminal  
19 illness or injury addressed to at least two adults, at least one of whom is a  
20 disinterested witness.

21 (b) A record signed pursuant to subsection (a)(1)(B) must:

22 (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness,

1           who have signed at the request of the individual; and

2           (2)    State that it has been signed and witnessed as provided in paragraph (1).

3           (c) An individual who has made a refusal may amend or revoke the refusal:

4           (1)    In the manner provided in subsection (a) for making a refusal;

5           (2)    By subsequently making an anatomical gift pursuant to section 5 of this Act that is  
6           inconsistent with the refusal; or

7           (3)    By destroying or canceling the record evidencing the refusal, or the portion of the  
8           record used to make the refusal, with the intent to revoke the refusal.

9           (d) Except as otherwise provided in section 8(h) of this Act, in the absence of an express,  
10          contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal  
11          to make an anatomical gift of the individual's body or part bars all other persons from making  
12          an anatomical gift of the individual's body or part.

13          Section 8. (a) Except as otherwise provided in subsection (g) and subject to subsection (f),  
14          in the absence of an express, contrary indication by the donor, a person other than the donor is  
15          barred from making, amending, or revoking an anatomical gift of a donor's body or part if the  
16          donor made an anatomical gift of the donor's body or part under section 5 of this Act or an  
17          amendment to an anatomical gift of the donor's body or part under section 6 of this Act.

18          (b) A donor's revocation of an anatomical gift of the donor's body or part under section 6 of  
19          this Act is not a refusal and does not bar another person specified in section 4 or 9 of this Act  
20          from making an anatomical gift of the donor's body or part under section 5 or 10 of this Act.

21          (c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body  
22          or part under section 5 of this Act or an amendment to an anatomical gift of the donor's body  
23          or part under section 6 of this Act, another person may not make, amend, or revoke the gift of

1 the donor's body or part under section 10 of this Act.

2 (d) A revocation of an anatomical gift of a donor's body or part under section 6 of this Act  
3 by a person other than the donor does not bar another person from making an anatomical gift  
4 of the body or part under section 5 or 10 of this Act.

5 (e) In the absence of an express, contrary indication by the donor or other person authorized  
6 to make an anatomical gift under section 4 of this Act, an anatomical gift of a part is neither a  
7 refusal to give another part nor a limitation on the making of an anatomical gift of another part  
8 at a later time by the donor or another person.

9 (f) In the absence of an express, contrary indication by the donor or other person authorized  
10 to make an anatomical gift under section 4 of this Act, an anatomical gift of a part for one or  
11 more of the purposes set forth in section 4 of this Act is not a limitation on the making of an  
12 anatomical gift of the part for any of the other purposes by the donor or any other person under  
13 section 5 or 10 of this Act.

14 (g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably  
15 available may revoke or amend an anatomical gift of the donor's body or part.

16 (h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is  
17 reasonably available may revoke the minor's refusal.

18 Section 9. (a) Subject to subsections (b) and (c) and unless barred by section 7 or 8 of this  
19 Act, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy,  
20 research, or education may be made by any member of the following classes of persons who is  
21 reasonably available, in the order of priority listed:

22 (1) An agent of the decedent at the time of death who could have made an anatomical  
23 gift under section 4(2) of this Act immediately before the decedent's death;

- 1       (2)    The spouse of the decedent;
- 2       (3)    Adult children of the decedent;
- 3       (4)    Parents of the decedent;
- 4       (5)    Adult siblings of the decedent;
- 5       (6)    Adult grandchildren of the decedent;
- 6       (7)    Grandparents of the decedent;
- 7       (8)    An adult who exhibited special care and concern for the decedent;
- 8       (9)    The persons who were acting as the guardians of the person of the decedent at the
- 9            time of death; and
- 10      (10)   Any other person having the authority to dispose of the decedent's body.

11       (b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6),  
12       (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of  
13       the class unless that member or a person to which the gift may pass under section 11 of this Act  
14       knows of an objection by another member of the class. If an objection is known, the gift may  
15       be made only by a majority of the members of the class who are reasonably available.

16       (c) A person may not make an anatomical gift if, at the time of the decedent's death, a person  
17       in a prior class under subsection (a) is reasonably available to make or to object to the making  
18       of an anatomical gift.

19       Section 10. (a) A person authorized to make an anatomical gift under section 9 of this Act  
20       may make an anatomical gift by a document of gift signed by the person making the gift or by  
21       that person's oral communication that is electronically recorded or is contemporaneously  
22       reduced to a record and signed by the individual receiving the oral communication.

1 (b) Subject to subsection (c), an anatomical gift by a person authorized under section 9 of  
2 this Act may be amended or revoked orally or in a record by any member of a prior class who  
3 is reasonably available. If more than one member of the prior class is reasonably available, the  
4 gift made by a person authorized under section 9 of this Act may be:

5 (1) Amended only if a majority of the reasonably available members agree to the  
6 amending of the gift; or

7 (2) Revoked only if a majority of the reasonably available members agree to the revoking  
8 of the gift or if they are equally divided as to whether to revoke the gift.

9 (c) A revocation under subsection (b) is effective only if, before an incision has been made  
10 to remove a part from the donor's body or before invasive procedures have begun to prepare the  
11 recipient, the procurement organization, transplant hospital, or physician or technician knows  
12 of the revocation.

13 Section 11. (a) An anatomical gift may be made to the following persons named in the  
14 document of gift:

15 (1) A hospital; accredited medical school, dental school, college, or university; organ  
16 procurement organization; or other appropriate person, for research or education;

17 (2) Subject to subsection (b), an individual designated by the person making the  
18 anatomical gift if the individual is the recipient of the part;

19 (3) An eye bank or tissue bank.

20 (b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted into  
21 the individual, the part passes in accordance with subsection (g) in the absence of an express,  
22 contrary indication by the person making the anatomical gift.

23 (c) If an anatomical gift of one or more specific parts or of all parts is made in a document

1 of gift that does not name a person described in subsection (a) but identifies the purpose for  
2 which an anatomical gift may be used, the following rules apply:

3 (1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the  
4 gift passes to the appropriate eye bank.

5 (2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift  
6 passes to the appropriate tissue bank.

7 (3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the  
8 gift passes to the appropriate organ procurement organization as custodian of the  
9 organ.

10 (4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or  
11 education, the gift passes to the appropriate procurement organization.

12 (d) For the purpose of subsection (c), if there is more than one purpose of an anatomical gift  
13 set forth in the document of gift but the purposes are not set forth in any priority, the gift must  
14 be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation  
15 or therapy, the gift may be used for research or education.

16 (e) If an anatomical gift of one or more specific parts is made in a document of gift that does  
17 not name a person described in subsection (a) and does not identify the purpose of the gift, the  
18 gift may be used only for transplantation or therapy, and the gift passes in accordance with  
19 subsection (g).

20 (f) If a document of gift specifies only a general intent to make an anatomical gift by words  
21 such as donor, organ donor, or body donor, or by a symbol or statement of similar import, the  
22 gift may be used only for transplantation or therapy, and the gift passes in accordance with  
23 subsection (g).

1 (g) For purposes of subsections (b), (e), and (f) the following rules apply:

2 (1) If the part is an eye, the gift passes to the appropriate eye bank.

3 (2) If the part is tissue, the gift passes to the appropriate tissue bank.

4 (3) If the part is an organ, the gift passes to the appropriate organ procurement  
5 organization as custodian of the organ.

6 (h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical  
7 gift under subsection (a)(2), passes to the organ procurement organization as custodian of the  
8 organ.

9 (i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the  
10 decedent's body or part is not used for transplantation, therapy, research, or education, custody  
11 of the body or part passes to the person under obligation to dispose of the body or part.

12 (j) A person may not accept an anatomical gift if the person knows that the gift was not  
13 effectively made under section 5 or 10 of this Act or if the person knows that the decedent made  
14 a refusal under section 7 of this Act that was not revoked. For purposes of the subsection, if a  
15 person knows that an anatomical gift was made on a document of gift, the person is deemed to  
16 know of any amendment or revocation of the gift or any refusal to make an anatomical gift on  
17 the same document of gift.

18 (k) Except as otherwise provided in subsection (a)(2), nothing in this Act affects the  
19 allocation of organs for transplantation or therapy.

20 Section 12. (a) The following persons shall make a reasonable search of an individual who  
21 the person reasonably believes is dead or near death for a document of gift or other information  
22 identifying the individual as a donor or as an individual who made a refusal:

23 (1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding

1           the individual; and

2           (2) If no other source of the information is immediately available, a hospital, as soon as  
3           practical after the individual's arrival at the hospital.

4           (b) If a document of gift or a refusal to make an anatomical gift is located by the search  
5           required by subsection (a)(1) and the individual or deceased individual to whom it relates is  
6           taken to a hospital, the person responsible for conducting the search shall send the document  
7           of gift or refusal to the hospital.

8           (c) A person is not subject to criminal or civil liability for failing to discharge the duties  
9           imposed by this section but may be subject to administrative sanctions.

10          Section 13. (a) A document of gift need not be delivered during the donor's lifetime to be  
11          effective.

12          (b) Upon or after an individual's death, a person in possession of a document of gift or a  
13          refusal to make an anatomical gift with respect to the individual shall allow examination and  
14          copying of the document of gift or refusal by a person authorized to make or object to the  
15          making of an anatomical gift with respect to the individual or by a person to which the gift could  
16          pass under section 11 of this Act.

17          Section 14. (a) When a hospital refers an individual at or near death to a procurement  
18          organization, the organization shall make a reasonable search of the records of the Department  
19          of Public Safety and any donor registry that it knows exists for the geographical area in which  
20          the individual resides to ascertain whether the individual has made an anatomical gift.

21          (b) A procurement organization must be allowed reasonable access to information in the  
22          records of the Department of Public Safety to ascertain whether an individual at or near death  
23          is a donor.

1 (c) When a hospital refers an individual at or near death to a procurement organization, the  
2 organization may conduct any reasonable examination necessary to ensure the medical  
3 suitability of a part that is or could be the subject of an anatomical gift for transplantation,  
4 therapy, research, or education from a donor or a prospective donor. During the examination  
5 period, measures necessary to ensure the medical suitability of the part may not be withdrawn  
6 unless the hospital or procurement organization knows that the individual expressed a contrary  
7 intent.

8 (d) Unless prohibited by law other than this Act, at any time after a donor's death, the person  
9 to which a part passes under section 11 of this Act may conduct any reasonable examination  
10 necessary to ensure the medical suitability of the body or part for its intended purpose.

11 (e) Unless prohibited by law other than this Act, an examination under subsection (c) or (d)  
12 may include an examination of all medical and dental records of the donor or prospective donor.

13 (f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement  
14 organization knows the minor is emancipated, the procurement organization shall conduct a  
15 reasonable search for the parents of the minor and provide the parents with an opportunity to  
16 revoke or amend the anatomical gift or revoke the refusal.

17 (g) Upon referral by a hospital under subsection (a), a procurement organization shall make  
18 a reasonable search for any person listed in section 9 of this Act having priority to make an  
19 anatomical gift on behalf of a prospective donor. If a procurement organization receives  
20 information that an anatomical gift to any other person was made, amended, or revoked, it shall  
21 promptly advise the other person of all relevant information.

22 (h) Subject to sections 11(i) and 23 of this Act, the rights of the person to which a part  
23 passes under section 11 of this Act are superior to the rights of all others with respect to the part.

1 The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of  
2 the document of gift and this Act, a person that accepts an anatomical gift of an entire body may  
3 allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of  
4 a part, the person to which the part passes under section 11 of this Act, upon the death of the  
5 donor and before embalming, burial, or cremation, shall cause the part to be removed without  
6 unnecessary mutilation.

7 (i) Neither the physician who attends the decedent at death nor the physician who determines  
8 the time of the decedent's death may participate in the procedures for removing or transplanting  
9 a part from the decedent.

10 (j) A physician or technician may remove a donated part from the body of a donor that the  
11 physician or technician is qualified to remove.

12 Section 15. Each hospital in this state shall enter into agreements or affiliations with  
13 procurement organizations for coordination of procurement and use of anatomical gifts.

14 Section 16. (a) Except as otherwise provided in subsection (b), a person that for valuable  
15 consideration, knowingly purchases or sells a part for transplantation or therapy if removal of  
16 a part from an individual is intended to occur after the individual's death commits a Class 5  
17 felony.

18 (b) A person may charge a reasonable amount for the removal, processing, preservation,  
19 quality control, storage, transportation, implantation, or disposal of a part.

20 Section 17. A person that, in order to obtain a financial gain, intentionally falsifies, forges,  
21 conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document  
22 of gift, or a refusal commits a Class 5 felony.

23 Section 18. (a) A person that acts in accordance with this Act or with the applicable

1 anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act  
2 in a civil action, criminal prosecution, or administrative proceeding.

3 (b) Neither the person making an anatomical gift nor the donor's estate is liable for any  
4 injury or damage that results from the making or use of the gift.

5 (c) In determining whether an anatomical gift has been made, amended, or revoked under  
6 this Act, a person may rely upon representations of an individual listed in section 9(a)(2), (3),  
7 (4), (5), (6), (7), or (8) of this Act relating to the individual's relationship to the donor or  
8 prospective donor unless the person knows that the representation is untrue.

9 Section 19. (a) A document of gift is valid if executed in accordance with:

10 (1) This Act;

11 (2) The laws of the state or country where it was executed; or

12 (3) The laws of the state or country where the person making the anatomical gift was  
13 domiciled, has a place of residence, or was a national at the time the document of gift  
14 was executed.

15 (b) If a document of gift is valid under this section, the law of this state governs the  
16 interpretation of the document of gift.

17 (c) A person may presume that a document of gift or amendment of an anatomical gift is  
18 valid unless that person knows that it was not validly executed or was revoked.

19 Section 20. (a) The Department of Public Safety may establish or contract for the  
20 establishment of a donor registry.

21 (b) The Department of Public Safety shall cooperate with a person that administers any  
22 donor registry that this state establishes, contracts for, or recognizes for the purpose of

1 transferring to the donor registry all relevant information regarding a donor's making,  
2 amendment to, or revocation of an anatomical gift.

3 (c) A donor registry must:

4 (1) Allow a donor or other person authorized under section 4 of this Act to include on  
5 the donor registry a statement or symbol that the donor has made, amended, or  
6 revoked an anatomical gift;

7 (2) Be accessible to a procurement organization to allow it to obtain relevant information  
8 on the donor registry to determine, at or near death of the donor or a prospective  
9 donor, whether the donor or prospective donor has made, amended, or revoked an  
10 anatomical gift; and

11 (3) Be accessible for purposes of paragraph (2) seven days a week on a twenty-four hour  
12 basis.

13 (d) Personally identifiable information on a donor registry about a donor or prospective  
14 donor may not be used or disclosed without the express consent of the donor, prospective donor,  
15 or person that made the anatomical gift for any purpose other than to determine, at or near death  
16 of the donor or prospective donor, whether the donor or prospective donor has made, amended,  
17 or revoked an anatomical gift.

18 (e) This section does not prohibit any person from creating or maintaining a donor registry  
19 that is not established by or under contract with the state. Any such registry must comply with  
20 subsections (c) and (d).

21 Section 21. (a) In this section:

22 (1) "Advance health care directive" means a power of attorney for health care or a record  
23 signed by a prospective donor containing the prospective donor's direction

1 concerning a health care decision for the prospective donor.

2 (2) "Declaration" means a record signed by a prospective donor specifying the  
3 circumstances under which a life support system may be withheld or withdrawn from  
4 the prospective donor.

5 (3) "Health care decision" means any decision made regarding the health care of the  
6 prospective donor.

7 (b) If a prospective donor has a declaration or advance health care directive, measures  
8 necessary to ensure the medical suitability of an organ for transplantation or therapy may not  
9 be withheld or withdrawn from the prospective donor, unless the declaration expressly provides  
10 to the contrary.

11 Section 22. (a) A coroner shall cooperate with procurement organizations to maximize the  
12 opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or  
13 education.

14 (b) If a coroner receives notice from a procurement organization that an anatomical gift  
15 might be available or was made with respect to a decedent whose body is under the jurisdiction  
16 of the coroner and a post-mortem examination is going to be performed, unless the coroner  
17 denies recovery in accordance with section 23 of this Act, the coroner or designee shall conduct  
18 a post-mortem examination of the body or the part in a manner and within a period compatible  
19 with its preservation for the purposes of the gift.

20 (c) A part may not be removed from the body of a decedent under the jurisdiction of a  
21 coroner for transplantation, therapy, research, or education unless the part is the subject of an  
22 anatomical gift. The body of a decedent under the jurisdiction of the coroner may not be  
23 delivered to a person for research or education unless the body is the subject of an anatomical

1 gift. This subsection does not preclude a coroner from performing the medicolegal investigation  
2 upon the body or parts of a decedent under the jurisdiction of the coroner.

3 Section 23. (a) Upon request of a procurement organization, a coroner shall release to the  
4 procurement organization the name, contact information, and available medical and social  
5 history of a decedent whose body is under the jurisdiction of the coroner. If the decedent's body  
6 or part is medically suitable for transplantation, therapy, research, or education, the coroner shall  
7 release post-mortem examination results to the procurement organization. The procurement  
8 organization may make a subsequent disclosure of the post-mortem examination results or other  
9 information received from the coroner only if relevant to transplantation or therapy.

10 (b) The coroner may conduct a medicolegal examination by reviewing all medical records,  
11 laboratory test results, X rays, other diagnostic results, and other information that any person  
12 possesses about a donor or prospective donor whose body is under the jurisdiction of the  
13 coroner which the coroner determines may be relevant to the investigation.

14 (c) A person that has any information requested by a coroner pursuant to subsection (b) shall  
15 provide that information as expeditiously as possible to allow the coroner to conduct the  
16 medicolegal investigation within a period compatible with the preservation of parts for the  
17 purpose of transplantation, therapy, research, or education.

18 (d) If an anatomical gift has been or might be made of a part of a decedent whose body is  
19 under the jurisdiction of the coroner and a post-mortem examination is not required, or the  
20 coroner determines that a post-mortem examination is required but that the recovery of the part  
21 that is the subject of an anatomical gift will not interfere with the examination, the coroner and  
22 procurement organization shall cooperate in the timely removal of the part from the decedent  
23 for the purpose of transplantation, therapy, research, or education.

1 (e) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner has  
2 been or might be made, but the coroner initially believes that the recovery of the part could  
3 interfere with the post-mortem investigation into the decedent's cause or manner of death, the  
4 coroner shall consult with the procurement organization or physician or technician designated  
5 by the procurement organization about the proposed recovery. After consultation, the coroner  
6 may allow the recovery.

7 (f) Following the consultation under subsection (e), in the absence of mutually agreed upon  
8 protocols to resolve conflict between the coroner and the procurement organization, if the  
9 coroner intends to deny recovery of an organ for transplanation, the coroner or designee, at the  
10 request of the procurement organization, shall attend the removal procedure for the part before  
11 making a final determination not to allow the procurement organization to recover the part.  
12 During the removal procedure, the coroner or designee may allow recovery by the procurement  
13 organization to proceed, or, if the coroner or designee reasonably believes that the part may be  
14 involved in determining the decedent's cause or manner of death, deny recovery by the  
15 procurement organization.

16 (g) If the coroner or designee denies recovery under subsection (f), the coroner or designee  
17 shall:

- 18 (1) Explain in a record the specific reasons for not allowing recovery of the part;
- 19 (2) Include the specific reasons in the records of the coroner; and
- 20 (3) Provide a record with the specific reasons to the procurement organization.

21 (h) If the coroner or designee allows recovery of a part under subsection (d), (e), or (f), the  
22 procurement organization, upon request, shall cause the physician or technician who removes  
23 the part to provide the coroner with a record describing the condition of the part, a biopsy, a

1 photograph, and any other information and observations that would assist in the post-mortem  
2 examination.

3 (i) If a coroner or designee is required to be present at a removal procedure under subsection  
4 (f), upon request the procurement organization requesting the recovery of the part shall  
5 reimburse the coroner or designee for the additional costs incurred in complying with subsection  
6 (f).

7 Section 24. In applying and construing this uniform act, consideration must be given to the  
8 need to promote uniformity of the law with respect to its subject matter among states that enact  
9 it.

10 Section 25. This Act modifies, limits, and supersedes the Electronic Signatures in Global  
11 and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit or  
12 supersede section 101(a) of that act, 15 U.S.C. section 7001, or authorize electronic delivery of  
13 any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

14 Section 26. That §§ 34-26-20, 34-26-21, and 34-26-22 to 34-26-46, inclusive, be repealed.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

445N0588

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 208** - 02/14/2007

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Hoerth, Jerstad, Katus, Kloucek, and Maher and Representatives Van Norman, Dennert, Elliott, Feinstein, and Thompson

1 FOR AN ACT ENTITLED, An Act to place certain restrictions on the use of tanning devices  
2 by minors.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Phototherapy device," equipment that emits ultraviolet radiation and is used in  
6 treating disease;

7 (2) "Tanning device," equipment that emits electromagnetic radiation having  
8 wavelengths in the air between two hundred and four hundred nanometers and that  
9 is used for tanning of human skin and any equipment used with that equipment,  
10 including protective eyewear, timers, and handrails. However, the term, tanning  
11 device, does not include a phototherapy device used by a physician;

12 (3) "Tanning facility," a place or business that provides persons access to a tanning



1           device.

2           Section 2. No owner or employee of a tanning facility may allow a minor under eighteen  
3 years of age to use a tanning device unless the minor provides a written informed consent  
4 statement signed and dated by the minor's parent or legal guardian stating that the parent or legal  
5 guardian has read and understands the warnings provided by the tanning facility, consents to the  
6 minor's use of the tanning device, and agrees that the minor shall use protective eyewear. A  
7 violation of this section is a Class 2 misdemeanor.